

August 31, 2005

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File Nos.  
**L03P0030/L04SH007**  
Proposed Ordinance No. **2005-0292**

**SWAN SONG**

Preliminary Plat Application  
Shoreline Management Substantial Development Permit

Location: 2885 South 355th Street

Applicant: **Bill Bremmeyer**  
2885 South 355th Street  
Federal Way, Washington 98003  
Telephone: (425) 432-9310

King County: Department of Development and Environmental Services, *represented by*  
**Fereshteh Dehkordi**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7173  
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**SUMMARY OF DECISION/RECOMMENDATIONS:**

Department's Preliminary Recommendation:	Approve, with conditions
Department's Final Recommendation:	Approve, with revised conditions
Examiner's Decision:	Approve, with revised conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:	August 11, 2005
Hearing Continued Administratively:	August 11, 2005
Hearing Closed:	August 19, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Owner/Developer:	Bill Bremmeyer 2885 South 355 <sup>th</sup> Street Federal Way, WA 98003 (425) 432-9310
Consulting Engineer:	Barghausen Consulting Engineers 18215 72 <sup>nd</sup> Avenue South Kent, WA 98032 (425) 251-6222
STR:	SE ¼ 28-21-04
Location:	2885 South 355 <sup>th</sup> Street
Zoning:	R-4
Acreage:	8.36 acres
Number of Lots:	29
Proposed Density:	2.8 du/acre
Lot Size:	Ranges from 4,050 to 10,689 sq. ft.
Proposed Use:	Single family residential
Sewage Disposal:	Lake Haven Utility District
Water Supply:	Lake Haven Utility District
Fire District:	King County Fire District No. 39
School District:	Federal Way School District

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. Applicant Bill Bremmeyer requests preliminary plat approval for a subdivision of 8.36 acres into 29 lots for detached single family residences and additional tracts for sensitive areas/open space, drainage and private access drives. The proposed gross density is approximately 2.8 dwelling units per acre, with lot sizes ranging from 4,050 square feet to 10,689 square feet. The site topography consists of generally gentle slopes: in the east portion (east of proposed Road A), the terrain generally slopes from south to north toward the south shores of Lake Killarney, while in the west portion the terrain generally slopes from east to west. Very small areas of steeper slopes lie onsite. The western and northwestern portions of the site are within regulatory buffer-width proximity of an outlet stream flowing southwest from Lake Killarney; an associated wetland occupies the far northwest corner of the western arm of the property.
4. Road access to the interior of the subdivision and the development lots will be provided a public road (Road A) running northerly as an extension of the proposed north-south road in the pending *Creskide Lane* subdivision (file L03P0023), recently granted preliminary plat approval. (The north-south road in *Creskide Lane* would extend northerly from South 360<sup>th</sup> Street.) Road A will terminate in an offset cul-de-sac bulb. Partway along Road A, an intersecting east-west public road (Road B) will extend easterly to the property's east boundary and terminate in a

temporary cul-de-sac pending future extension further to the east (the latitudinal location of the stub end of Road B has been placed strategically to facilitate further extension and development to the east in the long term future). Additionally, two private access drive tracts (Tracts D and F serving lots 23, 24 and 26-29; and 15 and 16, respectively) will branch from the main north-south road. In the sensitive area/open space tracts proposed for the lake shoreline portions of the site, an easement will be formalized to accommodate an existing access driveway which runs through the site to an adjacent parcel.

5. The plat design provides for buffer separation from existing lots abutting to the east, with an open space tract and a landscape easement. The Lake Killarney setting to the north has also been respected by the development layout, with its preservation of sensitive area/open space tracts in the closer proximities to the lake shoreline.<sup>1</sup>
6. The northern portions of the site within 200 feet of the ordinary high water mark (OHWM) of Lake Killarney lie within an Urban Environment shoreline as designated by the King County Shoreline Management Master Program (adopted pursuant to the Shoreline Management Act (SMA); chapter 90.58 RCW). The Applicant has requested a Shoreline Management Substantial Development Permit for the portions of nine development lots, development drainage facilities, an access tract and park and open space tracts within the designated shoreline portion of the site. Such installation is permitted by KCC 25.16.100 *et seq.* and is shown to conform to applicable shoreline regulations.
7. In order to address downstream drainage conditions and mitigate development drainage impacts, the Mitigated Determination of Non-Significance (MDNS) issued for the proposed action imposes a mitigation measure requiring a birdcage inlet screen to preclude habitual dam building by beaver. Depending on the ascertainment of the inlet structure's location, installation of the birdcage screen may require the permission of a private property owner. If permission is not obtainable, then the development will be subject to Level II flow control standards of the 1998 King County Surface Water Design Manual.

#### CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

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<sup>1</sup> The Applicant may seek to access an existing Lake Killarney footbridge for use by the development's residents, via a currently unproposed recreation trail to be developed within the plat, and accordingly may seek a later revision to the preliminary plat.

4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on September 28, 2004, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.
5. Subject to the conditions imposed below, the proposed location of the residential subdivision development and appurtenances within the Urban Environment shoreline on the property is consistent with the goals, policies and objectives of the County's Shoreline Management Master Program and the SMA.
6. Also as subject to the conditions imposed below, the proposed development within the shoreline is consistent with applicable shoreline regulations set forth in Title 25 KCC.

#### DECISION:

##### Shoreline Permit

The Shoreline Management Substantial Development Permit for the proposed *Swan Song* subdivision development is approved subject to the following conditions of approval:

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. **TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090).** The following requirements shall apply to all permits.
  - A. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean the time limits established are reasonable related to the time actually necessary to perform the development on the ground and complete the project that is being permitted and/or are necessary for the protection of shoreline resources.

- B. Where neither local government nor the department include specific provisions establishing time limits on a permit as part of action on the permit, the following time limits shall apply:
- (1) Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
  - (2) Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
  - (3) The effective date of a shoreline permit shall be the date of the last action required on a shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval's. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
  - (4) When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, that an alternative compliance limit may be specified in the permit.
  - (5) Revisions to permits under WAS 173-27-100 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
  - (6) Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.

The standard five-year permit life, and the possible one-year extension, shall pertain to this permit.

5. Construction shall occur in conformance to the project plans and information received by King County on September 2, 2004.

6. Construction waste shall be recycled or disposed of at an appropriate upland disposal facility outside of shorelines, sensitive areas and their buffers.
7. An approved temporary erosion and sediment control (TESC) plan shall be required prior to building permit approval.
8. Use of beach material for construction purposes is prohibited.
9. No petroleum products or other deleterious materials shall enter surface waters.
10. Any subsequent changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
11. As may be required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish and Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.
12. As may be required, a U.S. Army Corps of Engineers Permit shall be obtained prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit.
13. Erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of concrete, cement, water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
14. A copy of the approved shoreline plans and any necessary revisions shall be kept on-site at all times during construction.
15. Upon project completion, the King County Environmental Scientist assigned to this project shall be contacted to complete a compliance inspection.
16. Within 30 days after completion of the work, at least six (6) photographs taken from different directions shall be provided to DDES Shorelines.
17. Pertinent conditions of approval of the companion *Swan Song* subdivision (L03P0030) shall be considered conditions of the subject Shoreline Management Substantial Development permit.

#### Preliminary Plat

The preliminary plat of the *Swan Song* subdivision, as revised and received September 28, 2004, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - A. Drainage plans and analysis shall comply with the 1998 KCSWDM. DDES approval of the drainage and roadway plans is required prior to any construction.
  - B. Current standard plan notes and ESC notes, as established by DDES Engineering Review shall be shown on the engineering plans.
  - C. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #\_\_\_\_\_ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
  - D. Core Requirement No. 1: Discharge at the Natural Location.

The applicant has received approval for the requested diversion of surface water within the project (See Adjustment File L04V0057). The conditions for adjustment approval shall be satisfied during design and review of the project's engineering plans.
  - E. Core Requirement No. 3: Flow Control.

Storm water runoff control shall be provided using the Level One flow control detention standard outlined in the 1998 KCSWDM. The size of the proposed drainage tract may have to increase to accommodate the required detention storage volume and water quality facility. The runoff control facility shall be located in a separate tract and dedicated to King County unless portions of the drainage tract are used for required recreation space in accordance with KCC 21A.14.180.

As specified in Section 5.1.1 of the 1998 KCSWDM, roof drain storm water shall be infiltrated or dispersed within the lot area if the soil conditions are favorable.

F. Core Requirement No. 8: Water Quality.

The project is required to meet the Basic water quality requirements of the 1998 KCSWDM.

G. Special Requirement #2: Floodplain/Floodway Delineation.

Because a stream and associated wetland are located on the property, a floodplain analysis shall be performed. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat. Hydrology to the on-site wetland shall be maintained and subject to review by County Sensitive Area staff during engineering review.

H. The following have been established under State Environmental Policy Act (SEPA) authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval:

- (1). The Level One Downstream Drainage Analysis has identified the repeated clogging of and drainage complaints related to an inlet to a 24-inch line under 26<sup>th</sup> Avenue SE near South 363<sup>rd</sup> Street approximately ¼ mile downstream from the site. It is unclear if the culvert inlet is in the street right-of-way or parcel 115070-7777, which is a sensitive area tract of the Brookshire North development.
- (2). Independently or in conjunction with the Killarney Vue Estates (L03P0008/L04SR081) and Creekside Lane (L03P0023) plats, a birdcage structure shall be added to the inlet of the culvert. An example of the birdcage type structure is shown in Figure 5.3.1.C in the 1998 KCSWDM.
- (3). This condition shall be considered satisfied if the birdcage structure has already been installed. If the inlet location is determined to be within parcel 115070-7777 and the *Brookshire North* development Homeowners Association refuses to provide a temporary construction easement for its installation, then subcondition 6.I below shall pertain.

I. If the installment of the birdcage as required by the above SEPA condition cannot be made, then Level II Flow control based on criteria in the 1998 IKCSWDM shall be required.

7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:

- A. The applicant has received a road variance approval (KC File No. L04V0067) to exceed the cul-de-sac and private access tract length and to allow reduction in bulb diameter. The variance was approved October 26, 2004. The final road improvements shall comply with the variance approval requirements.



- B. Roads A and B shall be improved as urban subaccess streets.
- C. Tract F shall be constructed as a private joint use driveway serving only two lots. The serving lots shall have undivided ownership of the tract and be responsible for its maintenance. As specified in KCRS 3.01.C, improvements shall include an 18 foot paved surface and a minimum tract width of 20 feet. Drainage control shall include a curb or thickened edge on one side.
- D. Tract D shall be designed as a private access tract serving proposed lots 26-29. These lots shall have undivided ownership of the tract and be responsible for its maintenance. Improvements shall conform to KCRS 2.03 for an urban minor access road which includes 22 feet of paving. The minimum tract width shall be 26 feet with a maximum length and bulb diameter defined by road variance decision, KC File L04V0067.
- E. A temporary cul-de-sac shall be provided at the terminus of Road B. The temporary cul-de-sac provided by easement and built by Creekside Lane shall be removed (if built) per 1993 KCRS, Section 2.08.D.
- F. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS.
- G. The existing east-west oriented water easement (recording number 5639965) and associated hydrant shall be relocated to accommodate the proposed plat layout. Moving it into the road right-of-way and private access tract D is appropriate and desired. Although the water easement can cross through that portion of proposed drainage Tract C that contains the outfall pipe, it cannot be located under any portion of the actually pond footprint or its associated berms.
- H. The applicant shall provide a 20-foot access easement as depicted through Tract H for the continued private access to parcel #9058.
- I. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
- J. Because the proposed project is dependent on the plat of Creekside Lane for access, the infrastructure plans and development for this site shall be coordinated with the construction and development of Creekside Lane. In this coordinated manner, the final recording of Swan Song shall follow the final recording of Creekside Lane. In the event that Creekside Lane fails to construct that portion of Road A as a public road within its boundary, the applicant for the Swan Song subdivision shall obtain the necessary right-of-way for utility and construction of that portion of Road A as a public road within Creekside Lane's site boundary.
- K. The following have been established under State Environmental Policy Act (SEPA) authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval:
  - (1) The proposed project (L03P0030) and the proposed plat of Creekside Lane share a roadway system and have been linked as a single development under previous plat reviews (the proposed plat of Killarney Grove, DDES File #S91P0037 and

Crescent Pointe DDES File #L98P0052) submitted to the County. The two share a common roadway system (the plat of Swan Song has no public roadway access without the plat of Creekside Lane). The two will jointly contribute more than 30 trips into the intersection of 28<sup>th</sup> Avenue South at South 360<sup>th</sup> Street, each will have at least 20% of their traffic entering the intersection, and the cumulative effect of the two projects along with other background development activity will result in a calculated level-of-service “F” at horizon year of the two projects. The two projects jointly create a significant adverse impact as defined under KCC 14.80. The applicant of Swan Song shall individually or jointly with the developer of Creekside Lane (DDES File #L03P0023) widen the north leg of 28<sup>th</sup> Avenue South at the South 360<sup>th</sup> Street intersection to provide a southbound right turn lane – improving the level-of-service to a calculated level-of-service “E” (at 41.2 seconds of delay), together with appropriate channelization and illumination meeting requirements of the King County Road Standards.

This southbound right turn lane shall be 12 feet wide and provide a minimum of 100 feet of storage, together with a taper meeting County Road Standards. A full-width paved shoulder for pedestrians shall be provided along the entire length of the turn lane and taper. If there is not adequate right-of-way for a full-width paved shoulder, the applicant may substitute either an urban roadway section (curb, gutter and 5-foot wide sidewalk), or, a minimum 5 foot wide paved shoulder separated from vehicle traffic by an extruded curb.

- (2) To provide a safe walkway for middle school-age pedestrians, and if not already constructed by the Applicant of Creekside Lane (Note: recording of the proposed plat of Swan Song cannot precede Creekside Lane: KCRS Section 1.03D), the Applicant shall improve South 360<sup>th</sup> Street from the subdivision boundary of the proposed plat of Creekside Lane to the intersection of 32<sup>nd</sup> Avenue South. At the southwest and southeast corners of the intersection of South 360<sup>th</sup> Street/ 32<sup>nd</sup> Avenue South, a widened paved ‘pad’ shall be provided for those students. A widened concrete pad shall be provided in conjunction with the frontage improvements at/near the southeast corner of the plat for high school students who will be provided bus transportation to Todd Beamer High School. This off-frontage improvement shall consist of one of the following:
  - a. A minimum five (5) foot wide paved walkway – separated from the existing roadway pavement edge by either a four (4) foot wide gravel shoulder, or, an extruded curb, OR
  - b. A full-width eight (8) foot wide paved shoulder delineated by a white edge line stripe, OR
  - c. Full urban improvements (i.e. concrete curb, gutter and 5-foot wide concrete sidewalk).

The Applicant may choose to share costs of the urban roadway-type walkway improvements (curb, gutter and sidewalk) above with the developer of the proposed plat of Creekside Lane (DDES File #L03P0023), provided the curb line shall be set at 22-feet north of the right-of-way centerline, the roadway widened with a full roadway pavement section, and the existing roadway pavement overlaid or reconstructed as required by the requirements of KCRS 4.01. (RCW 58.17.110)

To implement the above condition, the Applicant shall submit detailed engineering plans for the required walkway and other directly-related roadway work for review and approval by King County DOT and King County DDES prior to final engineering approval.

8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
11. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant. The proposed Tract A containing the wetland and stream meets the KCC 21A.24 requirements. The following applies to the onsite wetland and stream:

#### **Wetlands**

- A. Lake Killarney and its associated wetland are classified as Class I wetlands. Class I wetland(s) shall have a minimum buffer of 100 feet, measured from the wetland edge. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT). Buffer averaging may be proposed, pursuant to KCC 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist. A minimum building setback line of 15 feet shall be required from the edge of the tract.

**Streams**

- B. Class 1 streams shall have a minimum 100-foot buffer, measured from the ordinary high water mark (OHWM). Buffer averaging may be proposed, pursuant to KCC 21A.24.360, provided the total amount of buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist. The stream(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT). A minimum building setback line of 15 feet shall be required from the edge of the tract.
- C. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

- D. No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.
- E. The following have been established under State Environmental Policy Act (SEPA) authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval:
- (1) Split rail or similar fence approved by DDES shall be constructed along the edge of the Sensitive Area Tracts prior to final plat approval. Fencing details, construction and location shall be shown on the engineering plans for DDES review and approval. Fencing need not to be located along the common boundaries of the Sensitive Area Tract (SAT) and drainage tract. Instead the fence shall be placed along the western boundaries of Lots 20 to 23, the south boundary of Tract C, and the north boundary of Lot 29. This mitigation is intended to reduce disturbance within the protective buffer and associated wetland and stream.

12. Tract G as proposed is consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.). The following shall be provided at the engineering review:
  - A. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, finished grade, landscaping consistent with KCC 21A.16 and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
  - B. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item A., above, shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
  - C. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
14. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
  - A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - C. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - D. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
    - (1) The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
    - (2) The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.

- (3) The street trees shall be installed and inspected, or a performance bond posted, prior to recording of the plat. If a performance bond is posted, the street trees shall be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond shall be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
- (4) A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED this 31st day of August, 2005.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 31st day of August, 2005, to the following parties and interested persons of record:

Geraldine Baldwin  
34801 - 37th Pl. S.  
Auburn WA 98001

Barghausen Engineers, Inc.  
Attn: Ivana Halvorsen.  
18215 - 72nd Ave. S.  
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PO Box 9718  
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Federal Way WA 98063-9718

Paul & Fran Morris  
Killarney Cove B&B  
2860 S. 354th Lane  
Federal Way WA 98003

Kevin & Joan Patrick  
2888 S 355th St  
Federal Way WA 98003

Laura Phelps  
2848 S 355th St  
Federal Way WA 98003

Seattle KC Health Dept.  
E. Dist. Environ. Health  
14350 SE Eastgate Way  
Bellevue WA 98007

Mr. & Mrs. Thacker  
2849 S. 354th Lane  
Federal Way WA 98003

Geri Walker  
Federal Way School District  
31405 - 18th Ave. S.  
Federal Way WA 98003-5433

Mark Bergam  
LUSD/ERS  
MS OAK-DE-0100

Kim Claussen  
DDES/LUSD  
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Fereshteh Dehkordi  
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Lisa Dinsmore  
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Nick Gillen  
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Kris Langley  
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MS OAK-DE-0100

Carol Rogers  
DDES/LUSD  
MS OAK-DE-0100

Steve Townsend  
DDES/LUSD  
MS OAK-DE-0100

Larry West  
DDES/LUSD  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before September 14, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before September 21, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

### MINUTES OF THE AUGUST 11, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0030.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Mark Bergam and Kristen Langley, representing the Department; Ivana Halvorsen representing the Applicant, and Phil Kitzes.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L03P0030
- Exhibit No. 2 Department of Development and Environmental Services Preliminary report, dated August 11, 2005
- Exhibit No. 3 Application dated December 5, 2003
- Exhibit No. 4 Environmental Checklist dated December 2003; Revised March 2004
- Exhibit No. 5 Mitigated Determination of Non-significance dated June 24, 2005

- Exhibit No. 6 Affidavit of Posting indicating January 21<sup>st</sup>, 2004 as date of posting and January 22<sup>nd</sup>, 2004 as the date the affidavit was received by the Department of Development and Environmental Services
- Exhibit No. 7 Revised Site Plan dated September 28, 2004
- Exhibit No. 8 Assessor's map - 21-04-28
- Exhibit No. 9 Conceptual Drainage Plan
- Exhibit No. 10 Certificates of Concurrency (3)
- Exhibit No. 11 KCSWDM Decision dated September 23, 2004
- Exhibit No. 12 Road variance decision dated October 26, 2004 (*not used*)
- Exhibit No. 13 Wetland and Stream Analysis Report dated December 4, 2003 by B-twelve.
- Exhibit No. 14 Addendum Wetland and Stream Analysis Report dated May 7, 2004 by B-twelve Associates, Inc.
- Exhibit No. 15 Traffic Impact Analysis dated April 29, 2004 (*not used*)
- Exhibit No. 16 Level One Off-site Drainage Analysis report dated October 24, 2003 and revised May 26, 2004
- Exhibit No. 17 Traffic Impact Analysis dated April 29, 2004 by Transportation Planning & Engineering, Inc.
- Exhibit No. 18 Shoreline Application filed September 2, 2004
- Exhibit No. 19 Shoreline Permit File No L04SH007
- Exhibit No. 20 Road variance decision dated October 26, 2004
- Exhibit No. 21 Site Plan for Creekside Lane, File No. L03P0023
- Exhibit No. 22 Condition 6. I
- Exhibit No. 23 Department of Development and Environmental Services Preliminary report for Creekside Lane, File No. L03P0023